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July 10, 2015

U.S. ex rel. Kester v. Novartis Pharmaceuticals Corp.
No. 11 Civ. 8196 (CM) (JCF)

Dear Judge McMahon:

We represent Defendant Novartis Pharmaceuticals Corporation ("Novartis") in the above-referenced matter. In accordance with the Court's April 2, 2015 Order (ECF No. 406), the parties filed their joint pre-trial order ("JPTO") on Friday, June 26, 2015 (ECF No. 471). On Monday, June 29, 2015, the United States filed a corrected JPTO, revising the relief it sought. (ECF No. 472.) We write to request a conference to discuss issues that have arisen in connection with the JPTO, which hinder the parties' (or at least Novartis's) ability to prepare for trial.

The filing of the final pretrial order makes the case "trial ready". (April 7, 2015 Order, ECF No. 407.) However, the JPTO demonstrates that Plaintiffs are not. The Court has informed the parties that they "will be on the clock" and that the Court has a total of six weeks, starting on November 2, 2015 and including Thanksgiving week, to try this case to verdict. (April 2, 2015 Order.) Novartis understands that the Court, according to its Individual Practices and Procedures, conducts trials Monday through Thursday from 9:30 a.m. to 5:00 p.m. Excluding one Wednesday and one Thursday for official Court holidays (Veterans Day and Thanksgiving) and one day for jury selection, openings and closings, there are, at most, 21 days available for witness testimony. Assuming approximately six hours of testimony per day and putting aside any time the jury uses to deliberate, there are approximately 126 total hours for testimony, which means each side will have approximately 63 hours to examine witnesses—for direct and cross examinations as well as deposition video designations.

Despite these time limitations, Plaintiffs have designated more than 70 hours of video deposition testimony as part of their affirmative case alone, and they have made counter and "counter counter" designations totaling an additional eight hours of video testimony. Plaintiffs also have listed 112 live trial witnesses. That total includes 41 witnesses Plaintiffs indicated they "will call" live, 23 witnesses Plaintiffs indicated they "may call" live and 48 live witnesses representing the relevant state Medicaid programs. Plaintiffs have indicated they will

or may present seven other witnesses live and by deposition. Furthermore, Plaintiffs also have listed over 4,000 intended trial exhibits.¹ We submit that the statistics belie Plaintiffs' assertion of trial readiness.

We believe the parties will benefit from the Court's guidance now regarding the issues described above as well as "the possibility of organizing the evidence so that issues are submitted to the jury seriatim" (April 2, 2015 Order), so that they can effectively use the remaining time to prepare for and conduct trial in an efficient manner. We, therefore, respectfully request a conference at the Court's convenience to discuss these matters.

Respectfully,



Evan R. Chesler

Hon. Colleen McMahon
United States District Judge
Southern District of New York
500 Pearl Street, Room 1640
New York, NY 10007

VIA ECF

All Counsel of Record

VIA EMAIL AND ECF

¹ Shortly before the JPTO was due, Plaintiffs proposed summarizing some of their intended trial exhibits in charts pursuant to Federal Rule of Evidence 1006. While Novartis does not object to the concept, Plaintiffs' proposed charts contained inaccuracies and were not sufficiently supported by the documents upon which Plaintiffs rely. In any event, such summaries would result in only a very modest culling of Plaintiffs' exhibits.